

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Establishing Rules and Policies for the use of)	IB Docket No. 96-132
Spectrum for Mobile Satellite Services in the)	
Upper and Lower L-band)	

**PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION OF
MOBILE SATELLITE VENTURES (CANADA) INC.**

Mobile Satellite Ventures (Canada) Inc. ("MSV Canada") hereby urges the Federal Communications Commission ("FCC") to clarify that the spectrum cap it imposed on the U.S. licensed L-band operator in the order in the above-referenced proceeding¹ does not apply to the Canadian coordinated spectrum of MSV Canada. The *Order* appears to misunderstand the nature of the relationship between MSV Canada and the U.S. licensed L-Band operator, Mobile Satellite Ventures Subsidiary LLC ("MSV") and ignores the fact that MSV Canada is a separate company with a separate controlling shareholder that is licensed in Canada to use spectrum which is coordinated for its use by the Canadian administration. As such, any steps taken by the FCC to cap MSV's access to U.S.-licensed spectrum on the basis of spectrum that has been licensed by another administration to MSV Canada would be unfair and inappropriate.

Background

MSV Canada. TMI Communications and Company L.P. ("TMI") is the former licensee of the L-band satellite MSAT-1, licensed by Industry Canada. MSAT-1 was launched in 1996 and operates at the 106.5° W.L. orbital position. The Canadian MSS L-band system is one of the five systems currently sharing the L-band. Spectrum for MSAT-1 is coordinated by the Federal

¹ Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Order*, IB Docket No. 96-132 (2002) ("*Order*").

Department of Industry (“Industry Canada”) in Canada at international L-band coordination negotiations.

In November 1999, the FCC granted TMI authority to operate L-band mobile earth terminals (“METs”) in conjunction with the MSAT-1 satellite to provide MSS in the United States.² In November 2001, TMI entered into a joint venture with Motient Services Inc. (“MSI”), the U.S.-licensed L-band MSS operator, as well as other investors. As a result of this joint venture, MSV Canada became the owner and operator of the L-band satellite MSAT-1, which is licensed by Industry Canada and MSV became the owner and operator of the L-band satellite MSAT-2 (formerly known as AMSC-1), which is licensed by the FCC in the United States.³

Lower L-band Proceeding. In June 1996, the FCC released a Notice of Proposed Rulemaking (“*NPRM*”) proposing to facilitate MSV’s (then AMSC) access to the L-band spectrum by modifying its license to allow it to operate in both the upper and lower L-band.⁴ In February 2002, the FCC released an *Order* in this proceeding adopting its proposal by assigning MSV a total of 20 MHz of spectrum in both the upper and lower L-bands. The FCC did not authorize MSV for the complete 28 MHz its license allows because of the FCC’s desire to license another MSS system in the L-band. *Order* at ¶ 19. The FCC explained that if sufficient spectrum in the L-band becomes available after it has coordinated 20 MHz of spectrum for MSV or if MSV “acquires access to at least 20 megahertz of L-band spectrum through other means,

² See *SatCom Systems*, 14 FCC Rcd 20798 (1999), *aff’d sub nom. AMSC v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000).

³ See *Motient Services Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 01-2732 (Nov. 21, 2001).

⁴ Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Notice of Proposed Rulemaking*, 11 FCC Rcd 11675 (1996) (“*NPRM*”).

i.e. its proposed merger with TMI,” then applicants may apply for this additional spectrum. *Id.* at ¶ 20.

Discussion

MSV Canada is concerned by the FCC’s statement in the *Order* that it will consider licensing another L-band MSS system if it can coordinate 20 megahertz for MSV or if MSV “acquire[s] access to at least 20 megahertz of L-band spectrum through other means, *i.e.* its proposed merger with TMI.” *Order* at ¶ 19 (emphasis added).

As an initial matter, it is important to point out that there has been no merger with the U.S. licensee. The MSAT-1 and AMSC-1 satellite systems are owned, controlled and operated by two separate corporate entities each of which has its own controlling shareholders. Thus, MSV Canada continues to be controlled by TMI and it continues to operate its own space segment, under the legislative authority and jurisdiction of Industry Canada.

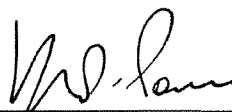
This jurisdiction is at the heart of MSV Canada’s other concern relating to the FCC’s *Order*. MSV Canada does not question the sovereignty of the United States or the right of the FCC to make decisions regarding the amount of L-band spectrum that is assigned to U.S. licensed MSS operators. However, any spectrum cap that the FCC deems appropriate to apply to a U.S. licensed L-band operator should only relate to that licensee and not to spectrum or systems licensed by other administrations. Simply put, the FCC’s process for allocating spectrum is distinct from how the Canadian administration or MSV Canada (pursuant to Industry Canada’s jurisdiction) pursues the international frequency coordination of the Canadian MSS

system. MSV Canada, of course, also hopes that the FCC would not penalize MSV Canada's joint venture partner for any success that Canada has in the coordination process.

Conclusion

Based on the foregoing, MSV Canada asks that the FCC clarify that the 20 MHz L-band spectrum cap imposed on MSV does not apply to the Canadian coordinated spectrum of MSV Canada.

Very truly yours,



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